IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 4650 OF 1993

Bank of Baroda, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 having its registered office at Mandvi, Baroda and branch office at "Rang Mahal" 212-216, Samuel Street, Mandvi, Mumbai 400 003. ... Plaintiff.

Versus.

1. Salim Abdul Patel, Indian Inhabitant residing at KL-5/31/09, Sec.3-E, CIDCO Colony, Kalamboli, New Bombay 410 218.

2. Peer Mohamed Mistry of Bombay, Indian Inhabitant, carrying on business at Synchron Controls, 121, S.V.Road, Jogeshwari (West), Bombay 400 102.

3. Bhasir Abdul Rehman, Indian Inhabitant, presently residing at KL-5/31/09 Sec.3-E, CIDCO Colony, Kalamboli, New Bombay
. 410 218. ... Defendants.

Shri A.B.Shinde for the Plaintiff.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 27th July, 2007.

ORAL JUDGMENT.:

1. The suit is listed under the caption "Undefended suits for exparte decree". The learned Counsel for the Plaintiff has tendered on record the affidavit in lieu

of evidence of Shri Kanubhai Nagjibhai Boriawala, a Manager of the Plaintiff. The affidavit is marked "X" for identification and the same is taken on record. The Counsel for the Plaintiff has also tendered on record the original documents along with a list. The said original documents along with the list are marked "Y" (collectively) for identification and the same are taken on record.

2. According to the case of the Plaintiff, on the application made by the 1st Defendant a term loan facility of Rs.75,000/- was sanctioned by the Plaintiff in favour of the 1st Defendant. On 9th December 1985, the first Defendant executed various documents in favour of the Plaintiff. On the same day, the 2nd and 3rd Defendants executed a deed of guarantee in favour of the Plaintiffs by which they guaranteed repayment of the amount payable under the term loan by the 1st Defendant. On 6th December 1988 a fresh set of documents was executed by the Defendants in favour of the Plaintiffs. On 11th December 1990 another set of documents was executed by the Defendants. According to the case of the Plaintiff the 3rd Defendant handed over a cheque dated 11th December 1990 to the Plaintiff in the sum of Rs.3000/- towards payment of instalment. The said cheque was dishonoured. On 30th April 1991 and 11th May

1991 two cheques in the sum of Rs.3000/- and Rs.2000/- respectively were issued by the 3rd Defendant in favour of the Plaintiff. However, both the said cheques were dishonoured. Therefore, a notice of demand dated 13th January 1992 was issued by the Advocate for the Plaintiff to the Defendants calling upon the Defendants to pay the entire amount payable under the demand loan facility. As there was no response from the Defendants, the present suit has been filed. The Plaintiff has filed on record a demand promissory note for Rs.1,05,320.05, a letter of instalment, a repayment agreement and a letter of hypothecation of vehicle executed on 11th February 1990 by the 1st Defendant and delivered to the Plaintiff. The Plaintiff has also produced deeds of guarantee separately executed by the 2nd and 3rd Defendants on 11th December 1990. The Plaintiff has also produced office copy of the notice dated 13th January 1992 and postal acknowledgements of the said notice. The certified extract of the loan account of the 1st Defendant is also placed on record.

3. The claim of the Plaintiff in the suit has been duly proved by the affidavit of Shri Kanubhai Nagjibhai Boriawala. The documents have been duly proved by the said witness. The original documents produced on record also prove the claim of the Plaintiff.

4. The Plaintiff has claimed further interest at the rate of 14% per annum with quarterly rests. Further interest will have to be granted at the rate of 12$% per annum from the date of the suit till realisation.

5. Hence the suit is decreed in terms of prayer clauses (a) to (c) and (g) with a modification that the further interest payable on the suit claim will be at the rate of 12% per annum from the date of filing of the suit till realisation or payment.

6. Certified copy is expedited.

Judge.